

Assembly Bill No. 2357

CHAPTER 487

An act to amend Section 230 of, and to add Section 230.1 to, the Labor Code, relating to employment.

[Approved by Governor September 16, 2000. Filed
with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2357, Honda. Victims of Domestic Violence Employment Leave Act.

Existing law prohibits an employer from discharging or discriminating or retaliating against an employee who is a victim of domestic violence for taking time off from work to obtain judicial relief to help ensure the health, safety, or welfare of the employee or his or her child. Existing law provides that an employee who has been discharged or discriminated or retaliated against in violation of these provisions is entitled to reinstatement and reimbursement of lost wages and benefits. The failure of an employer to rehire, promote, or restore an eligible employee constitutes a misdemeanor.

This bill would enact the Victims of Domestic Violence Employment Leave Act, which with regard to employers with 25 or more employees would additionally prohibit an employer from discharging or discriminating or retaliating against an employee who is a victim of domestic violence and who takes time off to seek medical attention, to obtain services from a domestic violence program, to obtain psychological counseling, or to participate in safety planning.

With regard to all employers, regardless of the number of employees, the bill would require the employer to give the employer reasonable advance notice of the intention to take time off for any of the purposes summarized above, as provided, and an employer would be required to maintain the confidentiality of an employee who requests time off pursuant to provisions of existing law or under provisions added by the bill.

By revising and expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) This act shall be known and may be cited as the Victims of Domestic Violence Employment Leave Act.

(b) The Legislature finds and declares the following:

(1) Domestic violence affects many persons without regard to age, race, educational level, socioeconomic status, religion, or occupation.

(2) Domestic violence is a crime that has a devastating effect on families, communities, and the workplace.

(3) Domestic violence impacts productivity, effectiveness, absenteeism, and employee turnover in the workplace.

(4) The National Crime Survey estimates that 175,000 days per year are missed from paid work due to domestic violence.

(5) The study also found that 56 percent of the victims were late for work at least five times a month, 28 percent of the victims had to leave work early at least five times a month, and 54 percent missed at least three days a month, all due to domestic violence.

(6) Victims of domestic violence may be vulnerable at work when trying to end an abusive relationship because the workplace may be the only place where the perpetrator knows to contact the victim.

(7) Employers must be sensitive to the needs of employees who are experiencing domestic violence and be responsive to those needs through personnel leave and benefits policies.

(8) Employees who commit acts of domestic violence at or away from the workplace should be disciplined in the same manner as employees who commit other acts of violence or harassment at or away from the workplace.

SEC. 2. Section 230 of the Labor Code is amended to read:

230. (a) No employer shall discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.

(b) No employer shall discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) No employer shall discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of the Family Code for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a domestic violence victim or his or her child.

(d) (1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

(3) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (c).

(e) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a), (b), or (c) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(f) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a), (b), or (c) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (c) shall have one year from the date of occurrence of the violation to file his or her complaint.

(g) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee

under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

SEC. 3. Section 230.1 is added to the Labor Code, to read:

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of the Family Code for taking time off from work to attend to any of the following:

(1) To seek medical attention for injuries caused by domestic violence.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence.

(3) To obtain psychological counseling related to an experience of domestic violence.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee appeared in court.

(C) Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

(3) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a

purpose set forth in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (a) shall have one year from the date of occurrence of the violation to file his or her complaint.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

